

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY LILONGWE NIACT IMMEDIATE

C O N F I D E N T I A L STATE 301108

E.O. 11652: GDS

TAGS: SHUM, MASS, MI

SUBJECT: HUMAN RIGHTS, MALAWI AND SECURITY ASSISTANCE

REF: A. STATE 273515 B. STATE 231122

1. AS YOU WILL HAVE NOTED FROM REF A, AUTHORIZATION FOR
CONTINUED ASSISTANCE TO BUNDA AGRICULTURAL COLLEGE IN FY 78
IS TO BE SOUGHT UNDER SECURITY SUPPORTING ASSISTANCE.

2. SECTION 502B OF THE FOREIGN ASSISTANCE ACT OF 1961 AS
AMENDED BY THE INTERNATIONAL SECURITY ASSISTANCE ACT AND
ARMS EXPORT CONTROL ACT OF 1976 STATES IN PARAGRAPH 502B(B)
THAT THE "SECRETARY OF STATE SHALL TRANSMIT TO THE CONGRESS,
AS PART OF THE PRESENTATION MATERIALS FOR SECURITY ASSIS-
TANCE PROGRAMS PROPOSED FOR EACH YEAR, A FULL AND COMPLETE
REPORT...WITH RESPECT TO PRACTICES REGARDING THE OBSERV-
ANCES OF THE RESPECT FOR INTERNATIONALLY RECOGNIZED HUMAN
RIGHTS IN EACH COUNTRY PROPOSED AS A RECIPIENT OF SECURITY
ASSISTANCE." PARAGRAPH (D) (2) OF SECTION 502B AS AMENDED
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DEFINES "SECURITY ASSISTANCE" TO INCLUDE SECURITY SUPPORT-
ING ASSISTANCE, FMS, CERTAIN COMMERCIAL SALES, CREDITS AND
OTHER PROGRAMS. THE FULL TEXT OF THE AMENDED SECTION 502B
WAS TRANSMITTED BY REFTEL B.

3. AS INDICATED IN REFTEL B, THE DEPARTMENT HAS BEEN COLLECTING AND PREPARING INFORMATION ON THE HUMAN RIGHTS SITUATIONS IN SECURITY ASSISTANCE RECIPIENT COUNTRIES IN ANTICIPATION OF SUBMITTING IT TO CONGRESS EARLY NEXT YEAR AS PART OF THE CONGRESSIONAL PRESENTATION DOCUMENT (CPD) ON SECURITY ASSISTANCE. HUMAN RIGHTS REPORTING FROM OVERSEAS POSTS, INFORMATION FROM NON-GOVERNMENTAL ORGANIZATIONS SUCH AS THE INTERNATIONAL COMMISSION OF JURISTS, AMNESTY INTERNATIONAL AND FREEDOM HOUSE, REPORTS BY INTERNATIONAL ORGANIZATIONS AND CONGRESSIONAL HEARINGS ON HUMAN RIGHTS HAVE BEEN COMPILED IN A DRAFT HUMAN RIGHTS OBSERVANCE REPORT ON EACH SECURITY ASSISTANCE RECIPIENT COUNTRY. THE DRAFT REPORT ON MALAWI FOLLOWS.

4. THE DRAFT REPORT FOLLOWS A STANDARD FORMAT CALLING FOR A DESCRIPTION OF THE POLITICAL AND LEGAL SITUATION IN THE COUNTRY, A DESCRIPTIVE STATEMENT OF ACTUAL OBSERVANCE OF RIGHTS AND FREEDOMS IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS WITH SPECIFIC ATTENTION TO MATTERS SPECIFIED IN THE INCLUSION CLAUSE OF PARAGRAPH (D)(1) OF SECTION 502B AS AMENDED, AND A REFLECTION OF OTHER HUMAN RIGHTS REPORTING. THE TEXT OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS WAS TRANSMITTED TO THE FIELD AS AN ENCLOSURE TO 75 STATE A-1045.

5. THE DRAFT REPORT HAS BEEN PARTIALLY CLEARED IN THE DEPARTMENT AND IS BEING USED INTERNALLY IN THE CURRENT REVIEW OF PROPOSED PROGRAMS FOR FY 1978. BEFORE FINAL CLEARANCE IN THE DEPARTMENT CAN BE OBTAINED FOR THE DRAFT REPORT'S INCLUSION IN THE CPD AS AN UNCLASSIFIED DOCUMENT (WHICH MAY BE PUBLICLY DISCLOSED IF CONGRESS SO CHOOSES), THE DEPARTMENT REQUESTS THE EMBASSY TO CAREFULLY REVIEW, CORRECT, UPDATE AND CLEAR THE DRAFT. (UNTIL THE DRAFT IS CLEARED FOR RELEASE, HOWEVER, IT REMAINS A WORKING DOCUMENT CLASSIFIED CONFIDENTIAL UNDER THE PROVISIONS OF EXECUTIVE ORDER 11652).
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6. IN CONDUCTING ITS REVIEW, THE EMBASSY SHOULD ENSURE THAT THE INFORMATION IN THE DRAFT CONSTITUTES A "FULL AND COMPLETE REPORT -- WITH RESPECT TO PRACTICES REGARDING THE OBSERVANCE OF HUMAN RIGHTS" IN MALAWI AS REQUIRED IN SECTION 502B(B) AS AMENDED.

7. REQUESTED ACTION: THE EMBASSY IS REQUESTED TO REVIEW THE DRAFT AND PROVIDE COMMENTS, SUGGESTED REVISIONS, UPDATING INFORMATION, ADDITIONAL INFORMATION IN SATISFACTION OF THE REQUIREMENTS OF SECTION 502B(B) AS AMENDED, AND CLEARANCE BY TELEGRAM TO REACH THE DEPARTMENT NO LATER THAN COB DECEMBER 13.

8. BEGIN DRAFT TEXT:

MALAWI

I. POLITICAL SITUATION - UNDER THE LEADERSHIP OF DR. H. KAMUZU BANDA, MALAWI BECAME FULLY INDEPENDENT FROM THE UNITED KINGDOM IN 1964. THE CURRENT CONSTITUTION, PASSED IN 1966, ESTABLISHES MALAWI AS A ONE-PARTY STATE UNDER A STRONG PRESIDENT, WHO NOMINALLY IS TO BE SELECTED EVERY FIVE YEARS BY TRIBUNAL CHIEFS AND MALAWI CONGRESS PARTY (MCP) OFFICIALS. THIS REQUIREMENT HAS BEEN WAIVED IN THE CASE OF DR. BANDA, WHO WAS DECLARED LIFE PRESIDENT IN 1970.

MALAWI HAS NO VICE PRESIDENT, AND THE CABINET, WHOSE MEMBERS ARE EITHER DRAWN FROM OR BECOME MEMBERS OF THE PARLIAMENT, IS APPOINTED BY THE PRESIDENT.

MALAWI'S UNICAMERAL NATIONAL ASSEMBLY HAS 60 ELECTED MEMBERS AND 18 APPOINTED BY THE PRESIDENT.

II. LEGAL SITUATION - THE 1966 CONSTITUTION SETS OUT EXTENSIVE GUARANTEES OF CITIZEN RIGHTS AND FREEDOMS, INCLUDING EXPLICIT RECOGNITION OF THE PERSONAL LIBERTIES ENCOMPASSED IN THE UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS. THE CONSTITUTION WAS AMENDED IN 1968, HOWEVER, TO PROVIDE FOR THE GENERAL SUSPENSION OF ITS CONFIDENTIAL

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GUARANTEES IF "REASONABLY REQUIRED IN THE INTERESTS OF DEFENCE, PUBLIC SAFETY, PUBLIC ORDER OR THE NATIONAL ECONOMY." NO STATE OF EMERGENCY NEED BE DECLARED FOR SUCH SUSPENSION TO BE UNDERTAKEN, AND KEY SECTIONS OF THE LAWS OF MALAWI, SPECIFICALLY THE PUBLIC SECURITY REGULATIONS, THE FORFEITURE ACT, THE DEPORTATION LAW AND THE CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT, GRANT THE MALAWIAN AUTHORITIES WIDE-RANGING AND BROADLY DISCRETIONARY POWERS TO CONTRAVENE THE CONSTITUTIONAL GUARANTEES.

MALAWI HAS TWO JUDICIAL SYSTEMS: THE MAGISTERIAL COURTS, HEADED BY A THREE-MEMBER SUPREME COURT, AND THE TRADITIONAL COURTS, BASED ON LOCAL COURTS ESTABLISHED BY THE BRITISH. IN THEORY, THE TWO SYSTEMS ARE BASED ON ENGLISH LEGAL TRADITIONS, AND PROVISION IS MADE FOR HABEAS CORPUS, RIGHT OF COUNSEL, AND A SYSTEM OF APPEALS. IN PRACTICE, HOWEVER, THE INDEPENDENT POWER OF THE JUDICIARY IS LIMITED; TWO SUPREME COURT RULINGS AGAINST THE GOVERNMENT'S DETENTION PRACTICES UNDER THE PUBLIC SECURITY REGULATIONS HAVE BEEN DISREGARDED, AND PRESIDENT BANDA PUBLICLY DECLARED IN MAY 1975 THAT HABEAS CORPUS IS "HOCUS POKUS" AND NO LONGER EXISTS IN MALAWI.

III. ACTUAL OBSERVANCE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS.

A. INTEGRITY OF THE PERSON.

ARTICLE 3: THE RIGHTS TO LIFE, LIBERTY AND THE SECURITY OF THE PERSON ARE FREQUENTLY CONTRAVENED IN MALAWI, USUALLY THROUGH THE APPLICATION OF SPECIFIC STATUTES SUCH AS THE PUBLIC SECURITY REGULATIONS.

ARTICLE 5: FOR SOME YEARS, THERE HAS APPARENTLY BEEN SPORADIC BRUTALITY TOWARD AND TORTURE OF POLITICAL DETAINEES; THERE HAVE BEEN A LARGE NUMBER OF SUCH REPORTS, WHICH TEND TO BE MUTUALLY CORROBORATIVE. MALAWIAN EXILE SOURCES HAVE ALLEGED THAT SIGNIFICANT NUMBERS OF DETAINEES HAVE BEEN "TORTURED TO DEATH," BUT THERE IS NO INDEPENDENT CONFIRMATION OF THESE REPORTS. IN THE COURSE OF THE INTENSE 1972-73 CAMPAIGN AGAINST JEHOVAH'S WITNESSES (SEE CONFIDENTIAL

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BELOW), MCP-SANCTIONED VIOLENCE REPORTEDLY RESULTED IN SCORES OF DEATHS, SOME ALLEGEDLY AFTER TORTURE. PRISON CONDITIONS IN MALAWI ARE OVER-CROWDED AND UNSANITARY, AND MEDICAL ATTENTION MINIMAL. THE DIET IS EXTREMELY SCANT.

ARTICLE 8: THERE IS NO LEGAL RECOURSE AGAINST ORDERS UNDER THE PUBLIC SECURITY REGULATIONS, THE FORFEITURE ACT, THE DEPORTATION ACT OR THE CENSORSHIP AND CONTROL OF ENTERTAINMENTS ACT. CRIMINAL SANCTIONS ARE THEORETICALLY AVAILABLE FOR USE AGAINST THOSE ENGAGING IN TORTURE OR INHUMAN TREATMENT OF PRISONERS, BUT THESE REQUIRE THE FILING OF CHARGES BY THE MALTREATED PRISONER, WHICH IS AT BEST IMPRACTICAL.

ARTICLE 9: A LARGE NUMBER OF MALAWIAN CITIZENS ARE CURRENTLY DETAINED UNDER PRESIDENTIAL ORDER, PURSUANT TO THE PUBLIC SECURITY REGULATIONS. ESTIMATES RANGE FROM 1000 TO OVER 2000 AS OF MID-1976. UNDER THE REGULATIONS, NO ARREST WARRANT IS REQUIRED, NO CHARGES NEED BE BROUGHT, AND NO TRIAL IS NORMALLY HELD. IT IS SUFFICIENT MERELY THAT THE PRESIDENT CONSIDERS AN INDIVIDUAL'S DETENTION "NECESSARY FOR THE PRESERVATION OF THE PUBLIC ORDER."

THOSE CURRENTLY DETAINED INCLUDE CIVIL SERVANTS (INCLUDING AT LEAST ONE FORMER CABINET MINISTER), JOURNALISTS, TEACHERS, LAWYERS, UNIVERSITY STAFF MEMBERS, STUDENTS, AND ORDINARY CITIZENS OF NO APPARENT POLITICAL IMPORTANCE. OFTEN DETAINEES ARE REPORTEDLY IGNORANT OF THE REASONS FOR THEIR DETENTION, AND NO PUBLIC NOTICE OF EITHER DETENTION

OR RELEASE IS USUALLY MADE. IN ONE INSTANCE IN 1971, THE POPULATION OF AN ENTIRE VILLAGE WAS REPORTEDLY DETAINED FOR

A NUMBER OF MONTHS.

ARTICLE 10 AND ARTICLE 11: INSOFAR AS THEIR CASES COME UNDER PROVISIONS OF ORDINARY MALAWIAN LAW RATHER THAN THE EXTRAORDINARY STATUTES LISTED ABOVE, IT APPEARS THAT THE RIGHTS OF ACCUSED PERSONS IN MALAWI TO A FAIR, IMPARTIAL AND SPEEDY TRIAL ARE GENERALLY OBSERVED. THE FAMILIAR SAFEGUARDS OF ENGLISH COMMON LAW ARE AT LEAST NOMINALLY AVAILABLE, ALTHOUGH AS NOTED ABOVE HABEAS CORPUS HAS BEEN CONFIDENTIAL

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EFFECTIVELY SUSPENDED BY THE PRESIDENT.

B. OTHER IMPORTANT FREEDOMS.

THE GOVERNMENT OF MALAWI HAS PERIODICALLY COMMITTED SEVERE INFRINGEMENTS OF ARTICLE 18 OF THE UNIVERSAL DECLARATION THROUGH ITS EFFORTS TO SUPPRESS THE JEHOVAH'S WITNESSES AND THE WATCHTOWER TRACT AND BIBLE SOCIETY, WHICH WERE BANNED IN 1967 AND 1969 RESPECTIVELY AS "UNLAWFUL SOCIETIES" CONSIDERED "DANGEROUS TO GOOD GOVERNMENT." LARGE NUMBERS OF MALAWIAN WITNESSES ARE NOW REPORTEDLY BEING IMPRISONED AFTER TRIAL UNDER THE BANNING ORDERS, BUT THERE IS NO INDEPENDENT CONFIRMATION OF REPORTS OF RENEWED ATROCITIES AGAINST MALAWIAN WITNESSES.

PRESS AND OTHER INFORMATION MEDIA ARE GOVERNMENT-CONTROLLED IN MALAWI, AND THE MINISTER (THE PRESIDENT) MAY SEIZE ANY INFORMATION WITHOUT A WARRANT IF HE DEEMS IT "PREJUDICIAL TO SAFETY." THE CENSORSHIP ACT LAYS OUT BROAD GUIDELINES WHICH RESTRICT AVAILABILITY OF ALL TYPES OF EXPRESSION, INCLUDING PUBLICATIONS, STATUTES, RECORDS, PICTURES, OR PARTS THEREOF. GOVERNMENT CONTROL IN THIS AREA ASSURES THAT ACCESS TO RIGHTS UNDER ARTICLE 19 (FREEDOM OF OPINION AND EXPRESSION) REMAINS VERY LIMITED.

THE MALAWI GOVERNMENT IS EMPOWERED BY THE FORFEITURE ACT TO SEIZE AND CONFISCATE A PERSON'S PROPERTY, WHETHER OR NOT THAT PERSON HAS BEEN CONVICTED OF ANY CRIME. THE SOLE CRITERION FOR TAKING SUCH ACTION IS THAT THE MINISTER (THE PRESIDENT) MUST BE SATISFIED THAT THE PERSON "IS, OR HAS BEEN ACTING IN A MANNER PREJUDICIAL TO THE SAFETY OR ECONOMY OF THE STATE OR SUBVERSIVE TO THE AUTHORITY OF THE LAWFULLY ESTABLISHED GOVERNMENT..." IN 1976, THE LAW HAS BEEN APPLIED AGAINST AT LEAST TEN PERSONS, INCLUDING THE RECENTLY DETAINED FORMER SECRETARY GENERAL OF THE MCP.

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CONTRARY TO ARTICLE 13 (FREEDOM OF MOVEMENT AND RESIDENCE), A CONTROL ORDER MAY BE ISSUED AGAINST ANY PERSON, RESTRICTING THAT PERSON'S RESIDENCE AND MOVEMENTS AND IMPOSING

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STRICT NOTIFICATION REQUIREMENTS, IF THIS IS FOUND
"NECESSARY FOR THE PRESERVATION OF PUBLIC ORDER."

III. OTHER REPORTING.

FREEDOM HOUSE DESCRIBES MALAWI AS "NOT FREE." IN A BRIEF-
ING PAPER PUBLISHED IN AUGUST 1976, AMNESTY INTERNATIONAL
CHARGED MALAWI WITH "WIDESPREAD USE OF PROLONGED DETENTION
.... SUPPRESSION BY FORCE AND HARASSMENT OF RELIGIOUS
GROUPS NOT CONFORMING TO GOVERNMENT DICTATES (AND) THE USE
OF TORTURE AGAINST POLITICAL DETAINEES AND DEATHS IN
DETENTION."

CHARGES OF RENEWED PERSECUTION AND ATROCITIES AGAINST
JEHOVAH'S WITNESSES APPEARED IN THE US NATIONAL PRESS LATE
IN 1975, AND CONTINUE TO BE FEATURED IN JEHOVAH'S WITNESS
PUBLICATIONS. IN ADDITION, REPORTS ON MALAWIAN VIOLATIONS
OF HUMAN RIGHTS HAVE APPEARED IN THE PAST YEAR IN A NUMBER
OF AFRICAN, BRITISH, AND EUROPEAN PUBLICATIONS. THEIR
PORTRAYALS OF THE SITUATION IN MALAWI ARE GENERALLY CON-
SISTENT, ALTHOUGH HUMAN RIGHTS ORGANIZATIONS ARE DENIED
ACCESS TO MALAWI AND THE TRANSMITTAL ABROAD OF INFORMATION
CRITICAL OF THE GOVERNMENT OR ITS PRACTICES IS CONSIDERED
A SERIOUS OFFENSE UNDER THE PUBLIC SECURITY REGULATIONS.

ROBINSON

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